

# BIRDWELL BUILDERS

P.O. BOX 592 - LEWISTOWN, MT 59457

COMMERCIAL CONTRACTORS

BRET BIRDWELL, OWNER



March 11, 2011

Senate Judicial Committee

Subject: An Employer's Perspective on Medical Marijuana

Dear Senators:

My name is Bret Birdwell. I am the owner of Birdwell Builders, Inc., a small commercial building contractor located in Lewistown. In recent years, my company has worked on public school projects, medical facilities, apartment complexes and all types of commercial building. My company supports eight Lewistown families year around. In addition, we hire seasonal employees.

Before going to work for Birdwell Builders, every employee reads and signs a drug and alcohol testing policy, as well as an employment manual. These documents explicitly prohibit the use of marijuana and other illegal drugs. My company conducts drug and alcohol testing in accord with the Montana Workforce Drug and Alcohol Testing Act.

In September 2010, one of my employees failed a random drug test. Prior to the test he had never disclosed that he held a medical marijuana card. The employee tested positive for marijuana and consequently was fired in accord with written company policy. The employee then sued me, alleging that he had a right to smoke marijuana, as a card carrying participant in the Medical Marijuana Act.

To me it is utterly ridiculous that my employee failed a drug test and yet he has the right to sue me. The employee was a 28-year-old male. He smokes marijuana because he has pain in his elbow. While on my jobsites, he drove vehicles and operated machinery and equipment. As indicated by the drug test, he drove my vehicles and operated my equipment with marijuana in his system, placing my other employees and other individuals at risk.

My job sites are regulated by federal workplace safety standards that are enforced by a federal agency (OSHA). OSHA requires me to maintain a safe workplace and does not provide me with the discretion to accommodate medical marijuana. I have a responsibility for the safety of my employees, my subcontractors and anyone else who visits my jobsite. It is incredible to think that I can be forced to allow people who are under the influence to operate tools, equipment and vehicles that are potentially lethal.

Telephone (406)535-2707

Fax (406)535-2708

Home (406)538-5226

Birdwell Builders is a corporation. My former employee not only sued my corporation, he sued me individually. My personal assets are at risk because of this lawsuit. If the Medical Marijuana Act is not repealed, additional lawsuits are inevitable. Under the current law, employers in Montana risk losing their business assets, as well as their homes and personal assets. The Medical Marijuana Act and the lawsuits that it will produce will force business owners like me out of business. If I fail, eight families in Lewistown will lose good jobs, solid wages, health insurance and other benefits.

I know one of the goals of this legislative session is to create jobs and keep the economy moving. My understanding is that the construction industry unemployment rate in this state is nearly 25%. Maintaining the Medical Marijuana Act does not create fertile ground for existing contractors to hire more people, nor does it encourage startup businesses.

The lawsuit that I am involved in is still pending. My attorney advised me that if suits like this one go to trial, the employer will likely pay at least \$40,000 in attorney's fees, win or lose. Unless you repeal the Medical Marijuana Act, more employers will be sued.

Thank you for considering my letter. I respectfully request that you repeal the Medical Marijuana Act.

Sincerely,

BIRDWELL BUILDERS, INC.

By: BMBU  
Bret M. Birdwell, President